

Grant Guidelines To States
For Implementing The
Financial Responsibility
And Installer Certification Provision Of
The Energy Policy Act Of 2005

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Overview Of Financial Responsibility And Installer Certification Guidelines

Why Is EPA Issuing These Guidelines?

The U.S. Environmental Protection Agency (EPA), in consultation with states and industry, has developed these grant guidelines to implement the financial responsibility and installer certification provision in Section 9003(i) of the Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, which is part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Section 1530 of the Energy Policy Act amends Section 9003 in Subtitle I of the Solid Waste Disposal Act to add requirements for additional measures to protect groundwater from contamination. State underground storage tank (UST) programs that receive funding under Subtitle I must meet, at a minimum, *one* of the following:

1. *Evidence Of Financial Responsibility And Certification* – A person that manufactures an underground tank or piping for an underground storage tank system or installs an underground storage tank system must maintain evidence of financial responsibility under Section 9003(d) of Subtitle I in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under Section 9003, Subtitle I. In addition, underground storage tank installers must: be certified or licensed; have the installation certified or approved; install the underground storage tank system compliant with a code of practice and in accordance with the manufacturer's instructions; or use another method determined to be no less protective of human health and the environment.

2. *Tank And Piping Secondary Containment* – Each new or replaced underground tank, or piping connected to any such new or replaced tank, that is within 1,000 feet of any existing community water system or any existing potable drinking water well must be secondarily contained and monitored for leaks. In the case of a replacement of an existing underground tank or existing piping connected to the underground tank, the secondary containment and monitoring shall apply only to the specific underground tank or piping being replaced, not to other underground tanks and connected pipes comprising such system. In addition, each new motor fuel dispenser system installed within 1,000 feet of any existing community water system or any existing potable drinking water well must have under-dispenser containment. These requirements do not apply to repairs meant to restore an underground tank, pipe, or dispenser to operating condition. (These requirements are described in the secondary containment guidelines, EPA 510-R-06-001, published on November 15, 2006, http://www.epa.gov/oust/fedlaws/final_sc.htm.)

What Is In These Guidelines?

These guidelines describe the minimum requirements for financial responsibility and installer certification that a state's underground storage tank program must contain in order for a state to comply with statutory requirements for Subtitle I funding. These guidelines include definitions, requirements, criteria, and options for states choosing to implement the financial responsibility and installer certification provision.

When Do These Guidelines Take Effect?

States receiving Subtitle I funding must implement *either* the financial responsibility and installer certification requirements described in these guidelines *or* the secondary containment requirements (EPA 510-R-06-001, published on November 15, 2006, http://www.epa.gov/oust/fedlaws/final_sc.htm) by February 8, 2007.

Requirements For Financial Responsibility And Installer Certification

What Tanks Do These Guidelines Apply To?

These guidelines apply to underground storage tank systems regulated under Subtitle I, except those excluded by regulation at 40 CFR Part 280.10(b) and those deferred by regulation at 40 CFR 280.10(c).

How Does A State Implement These Guidelines?

A state implements these guidelines by:

- Requiring financial responsibility for all manufacturers of underground storage tanks or piping for an underground storage tank system that is installed in the state,
- Requiring financial responsibility and installer certification for all installers of underground storage tank systems in the state, and
- Developing processes and procedures for financial responsibility and installer certification provisions that, at a minimum, meet the requirements in these guidelines.

The state must meet these guidelines by February 8, 2007. States may choose to be more stringent than these minimum requirements.

What Requirements Must A State Program Include To Meet The Financial Responsibility And Installer Certification Provision?

State requirements must, at a minimum, include the following provisions:

A. Persons Affected

State financial responsibility and installer certification requirements must clearly define who will be covered by them. At a minimum, the following persons must be covered:

- A person that manufactures an underground storage tank or piping for an underground storage tank system that is installed in the state (manufacturer).¹
- A person that installs part or all of an underground storage tank system in the state (installer).

The term “underground storage tank system” has the same definition as contained in 40 CFR Part 280.12.

¹ This requirement does not apply to manufacturing of underground ancillary equipment or containment systems.

Manufacturers or installers that demonstrate to the state that they already maintain financial responsibility as the owner or operator of an underground storage tank do not need to maintain financial responsibility as a manufacturer or installer for that same underground storage tank.

In states where a single installer of an underground storage tank system is identified by the state (e.g., for purposes of obtaining a permit), that person is the one required to maintain financial responsibility for that installation and meet the certification requirements described in these guidelines. Where there is not a single installer on record, states must define those who must maintain evidence of financial responsibility and meet the certification requirements described in these guidelines.

B. Amount And Scope Of Coverage

States must require a minimum of:

- \$1 million per occurrence and \$2 million annual aggregate for manufacturers to cover the costs of corrective action of a release from a regulated underground storage tank or piping, as appropriate, caused by improper manufacturing, and
- \$1 million per occurrence and \$2 million annual aggregate for installers to cover the costs of corrective action of a release from a regulated underground storage tank system due to improper installation.

These limits do not include legal defense costs.

C. Length Of Coverage

States must require that:

- Manufacturers of tanks and piping maintain financial responsibility coverage for 30 years after installation, or until the underground storage tank system is permanently closed, in accordance with 40 CFR 280.71, whichever of these events comes first.
- Installers of underground storage tank systems maintain financial responsibility for ten years after installation, or until the underground storage tank system is permanently closed, in accordance with 40 CFR 280.71, or whichever of these events comes first.

States may allow manufacturers and installers to obtain financial responsibility mechanisms with annual or other limited policy periods, as long as the manufacturer/installer maintains uninterrupted coverage for the full period required by these guidelines (30 years or ten years, as appropriate). These types of mechanisms are currently available. For example, insurance is currently available in various forms, including occurrence-based with annual policy periods or claims-made with annual policy periods coupled with appropriate retroactive and extended reporting periods.

D. Allowable Mechanisms

States may allow manufacturers and installers to use a variety of financial mechanisms as long as these mechanisms meet all of the following four criteria:

1. The mechanism must be valid and enforceable;
2. The mechanism must be issued by a provider that is licensed, registered, and/or otherwise qualified to provide such coverage in the state;
3. The mechanism must pay for the costs of corrective action, up to the coverage limits described above, resulting from a release from a regulated underground storage tank or tank system caused by improper manufacture or installation, as appropriate; and
4. The mechanism must require that the provider notify the insured and the state of cancellation or non-renewal of the mechanism, within a time frame determined to be reasonable by each state.

These mechanisms may include the ones currently used by tank owners and operators to meet their financial responsibility requirements under 40 Part 280.94 to 280.103. However, not all of these current mechanisms may be appropriate for use in all instances to meet the new manufacturer and installer financial responsibility requirement, and some may have to be modified to meet this new requirement and be consistent with state regulations.

In developing their requirements, states are encouraged to consider, as a model, provisions in 40 CFR Part 280, Subpart H, that reasonably prevent gaps in coverage, such as in cases of cancellation or non-renewal by the financial responsibility provider, bankruptcy of the installer/manufacturer, or incapacity or liquidation of the financial responsibility provider.

If a state chooses to use a state assurance fund to provide financial responsibility for manufacturers and/or installers, the state must develop a separate fund, independent from its existing state assurance fund (i.e., state fund used to provide financial responsibility for underground storage tank owners and operators). This requirement for a separate fund is to ensure the financial integrity of existing state assurance funds.

If a state allows a mechanism that includes a deductible, the state must either require first dollar coverage or that manufacturers and installers maintain separate financial responsibility coverage for the deductible amount.

E. Notification And Record Keeping

State requirements must contain a provision or provisions requiring a system of notification and record keeping to and/or by the manufacturer, installer, owner, operator, and/or the state program. These provisions must reasonably address, at a minimum, the following questions:

- To whom and when must the evidence of financial responsibility be provided?
- How and where must manufacturers and installers maintain evidence of financial responsibility?
- If an underground storage tank system is permanently closed, in accordance with 40 CFR 280.71, who needs to notify the manufacturer/installer?
- If the manufacturer or installer files for bankruptcy or ceases operation for any other reason, whom should they notify and when?
- Any other question(s) that the state may deem appropriate.

F. Installer Certification

The state must require that a person that installs an underground storage tank system meet one of the following:

- Be certified or licensed by the tank and piping manufacturer;
- Be certified or licensed by the EPA Administrator or a state, as appropriate;
- Have their underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;
- Have their installation of the underground storage tank inspected and approved by the Administrator or the state, as appropriate;
- Be compliant with a code of practice developed by a nationally-recognized association or independent testing laboratory and in accordance with the manufacturer's instructions; or
- Be compliant with another method that is determined by the Administrator or a state, as appropriate, to be no less protective of human health and the environment.

NOTE: These requirements are similar to the requirements already found under 40 CFR Parts 280.20(d), 280.20(e), and 280.33(a). Most, if not all, state underground storage tank regulations already cover these requirements for new installations and repairs. However, states must also require that persons who replace or add equipment after the initial installation of the underground storage tank system meet the installer certification requirements.

How Is The Liability Of Owners And Operators Affected?

These provisions do not affect or alter the liability of any owner or operator of an underground storage tank system. Owners and operators must still comply with all applicable technical regulations. For example, they must comply with the requirements to report releases, perform necessary corrective action, and maintain financial responsibility to pay for corrective action and for compensation of third parties for bodily injury and property damage.

What Enforcement Authority Must States Have For Financial Responsibility And Installer Certification?

At a minimum, states must have comparable enforcement authorities for violations of their financial responsibility and installer certification requirements as they have for violations of current underground storage tank requirements.

How Will States Demonstrate Compliance With These Guidelines?

After February 8, 2007, the effective date of the financial responsibility and installer certification requirements, and before receiving future grant funding, states must provide one of the following to EPA:

- For a state that has met the requirements for financial responsibility and installer certification, the state must submit a certification indicating that the state meets the requirements in the guidelines.
- For a state that has not yet met the requirements for financial responsibility and installer certification, the state must provide a document that describes the state's efforts to meet the requirements. This document must include:
 - A description of the state's activities to date to meet the requirements in the guidelines;
 - A description of the state's planned activities to meet the requirements; and
 - The date by which the state expects to meet the requirements.

EPA may verify state certification of compliance through site visits, record reviews, or audits, as authorized by 40 CFR Part 31.

How Will EPA Enforce States' Compliance With The Requirements In These Guidelines?

As a matter of law, each state that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with certain underground storage tank requirements of Subtitle I. EPA anticipates State and Tribal Assistance Grants (STAG) funds will be available for inspection and other underground storage tank compliance activities. EPA will also condition STAG grants with compliance with these guidelines. Absent a compelling reason to the contrary, EPA expects to address noncompliance with these STAG grant conditions by utilizing EPA's grant enforcement authorities under 40 CFR Part 31.43, as necessary and appropriate.

For More Information About The Financial Responsibility And Installer Certification Grant Guidelines

Visit the EPA Office of Underground Storage Tanks web site at www.epa.gov/oust or call 703-603-9900.

Background About The Energy Policy Act Of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (entitled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act – the original legislation that created the underground storage tank (UST) program. These amendments significantly affect federal and state underground storage tank programs, will require major changes to the programs, and are aimed at reducing underground storage tank releases to our environment.

The amendments focus on preventing releases. Among other things, they expand eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and include provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities.

To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: http://www.epa.gov/oust/fedlaws/nrg05_01.htm